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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. ~~1264~~ 113

MORRIS PARK, INC., APPELLANT

VS.

ELIZABETH F. BUCK, APPELLEE

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR TO AFFIRM

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The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of The Supreme Court of Errors of the State of Connecticut on the grounds that the appeal does not present a substantial federal question, and that said question was not raised in the Court below.

I

STATEMENT

This is an action for strict foreclosure of a mortgage wherein the appellee asked for a deficiency judgment. After a judgment of strict foreclosure was obtained, three appraisers were appointed by the Court to determine the value of the foreclosed property for purposes of a deficiency judgment should the defendant fail to redeem. (Page 23 of the Record of the Supreme Court of Errors of the State of Connecticut). The appellant had the selection of an appraiser. (Page 23 of said Record). The original judgment of strict foreclosure was opened for the purpose of extending the original law day to July 15, 1964, in accordance with judicial approval of the parties' stipulation to so extend the law day. (Pages 12 and 13 of said Record). The appellant failed to redeem on July 15, 1964, said law day. (Page 23 of said Record). On July 18, 1964, the three appraisers convened, were duly sworn in, viewed the property, and rendered their report. (Pages 23 and 24 of said Record). Said report, which valued the property at $25,000.00, was signed by each of the three appraisers. (Pages 23 and 24 of said Record). Said report was filed in Court on July 21, 1964. (Page 15 of said Record).

A remonstrance to the report of the appraisers was filed by appellant on August 31, 1964. A hearing on the remonstrance

was regularly assigned and such hearing was had before Cotter, J. on September 18, 1964 with appellant's officers, witnesses and attorney in attendance. On November 25, 1964, the report was accepted by the Court and the remonstrance denied. A supplemental judgment for deficiency was rendered by said court on December 4, 1964. (Page 19 of said Record). On December 15, 1964, the appellant filed its appeal from said judgment to the Supreme Court of Errors of the State of Connecticut. (Page 20 of said Record). On December 30, 1965, said Supreme Court of Errors rendered its judgment confirming said supplemental judgment for deficiency. The appellant has appealed to the Supreme Court of the United States.

II

ARGUMENT

The motion to dismiss should be granted for the following reasons:

A. There is no substantial Federal question raised because

1. The appellant had full notice

(a) A claim for a deficiency judgment was contained in the original complaint, thereby putting appellant on notice that appellee would exercise her rights under the Connecticut statute.

(b) At the time of the hearing when the law day was originally fixed, appellant was fully heard as to value (Record, Page 9).

(c) The Court, on appellee's motion, appointed appraisers (Record, Page 10). It is fair to assume that appellant's counsel knew the statutory provisions in relation thereto.

(d) Appellant's counsel signed a stipulation reopening and extending the law day (Record, Page 10).

(e) One of the appraisers was appointed by the Court upon nomination by appellant (Finding, ¶ 7).

(f) Appellant filed a remonstrance to the appraisers' report and was fully heard. (Record, Page 16; Appendix to briefs of both appellant and appellee filed with Supreme Court of Connecticut).

(g) Appellant was at all times represented by competent counsel, who knew or should have known, every detail of the matter.

B. The present question was not raised in the Court below:

1. (a) The remonstrance filed by the appellant is specifically based on the claim that "no opportunity was afforded to the defendant to produce evidence or to be heard in any manner" (Record, Page 17).

(b) The present appeal is based (Jurisdictional Statement, Page 14) upon the abstract question, not raised below that ". . . . even if the appraisers had attempted on their own initiative to give notice and hold a hearing this would have been a matter of happenstance, of favor, of accident, of luck; furthermore, the Sovereign State of Connecticut has ruled that such notice, if it had been given and such hearing, if it had been held, would each be a nullity because the appraisers were without power to hold a hearing and accordingly notice would be meaningless."

(c) This is not the question stated in III of the Notice of Appeal, and violates the Rules of the Court, 15 (2).

2. The appellant is on the horns of a dilemma. Either the appraisers should have given notice or they shouldn't have. If they should have (and did not) then we have a damnum absque injuria situation because the facts show appellant's rights were fully protected by adequate judicial hearings. Now, appellants claim, for the first time, that even if the appraisers had given notice, it would have been ineffective. The question is moot, and will not be considered by this Court. *Doremus v. Board of Education*, 342 U. S. 429; *Poe v. Ullman*, 367 U. S. 497; *Nostrand v. Little*, 368 U. S. 436; *Arlan's Dept. Store v. Kentucky*, 371 U. S. 218.

It is not necessary to encumber this motion with numerous citations, but a few are in order.

"The due process clause does not guarantee to a citizen of a State any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defence, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it." *Missouri ex rel. Hurwitz v. North*, 271 U. S. 40, 42.

More recent decisions, to the same effect and citing intermediate decisions, are *Mullane v. Central Hanover Bank and Trust Co.*, 339 U. S. 306; also *Schroeder v. City of New York*, 371 U. S. 208.

A very recent statement is in *Armstrong v. Manzo*, 380 U. S. 545, where it was said "A fundamental requirement of due process is 'the opportunity to be heard' . . . . . It is an opportunity which must be granted at a meaningful time and in a meaningful manner."

III

CONCLUSION

Wherefor, appellee respectfully submits that this appeal does not present a substantial federal question; that the federal question sought to be reviewed was neither timely, nor properly raised; and that the question is moot.

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